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UNITED STATES DISTRICT COURT
 NORTHERN DISTRICT OF CALIFORNIA
 SAN FRANCISCO DIVISION

PHYLLIS J. KING,)	C 08-01919 PJH
)	
Plaintiff,)	
)	DEFENDANT'S REPLY
v.)	MEMORANDUM IN SUPPORT OF
)	MOTION TO DISMISS
FEDERAL BUREAU OF)	
INVESTIGATION,)	Date: June 18, 2008
)	Time: 9:00 a.m.
Defendant.)	Ctrm:3, 17 th Floor

The federal defendant, specially appearing through its attorney of record, moved to dismiss plaintiff's complaint for lack of subject matter jurisdiction, pursuant to Federal Rule of Civil Procedure 12(b)(1). Specifically, plaintiff alleged that the Federal Bureau of Investigation ("FBI"), an agency of the United States, committed various torts. Under the Federal Tort Claims Act, 28 U.S.C. § 2671, *et seq.* ("FTCA"), a plaintiff must file an administrative claim with the appropriate federal agency before suing the United States, which is the only proper defendant. *See* 28 U.S.C. §§ 2401, 2675, 2679(a). Plaintiff did not file an administrative claim. Declaration of Jennifer Wilson, ¶ 4.

Plaintiff did not timely oppose the federal defendant's motion as required by Local Rule 7-3(b) (any opposition must be filed not less than 21 days before the hearing date). On June 17, 2008, plaintiff filed a declaration in opposition to the federal defendant's motion.

1 The federal defendant submits that the opposition should not be considered on the
2 grounds that it was not timely filed. To the extent that the court considers plaintiff's opposition,
3 however, the federal defendant requests that the court also consider this reply memorandum and
4 grant its motion to dismiss this case without prejudice. It does so on the grounds that it is
5 undisputed that plaintiff has not filed an administrative claim with the appropriate federal
6 agency, a jurisdictional prerequisite under the FTCA. In her declaration, plaintiff alleges that
7 "agents" entered her property and did various acts.¹ She did not, however, allege that she
8 submitted an administrative claim to the agency or provide any copy of that claim. This case
9 should be dismissed without prejudice so that pla

10 Respectfully submitted,

11 JOSEPH P. RUSSONIELLO
12 United States Attorney

13 Dated: June 17, 2008

14 By: /s/
15 Joann M. Swanson
16 Assistant United States Attorney
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28 ¹ The FBI has no record of any law enforcement activities under plaintiff's name.
Wilson Decl., ¶ 3.

CERTIFICATE OF SERVICE

I hereby certify that I am a resident of the State of California, over the age of eighteen years, and not a party to the within action. My business address is: Office of the United States Attorney, 450 Golden Gate Avenue, 9th floor, San Francisco, California 94102. I further certify that I caused the within document(s):

DEFENDANT’S REPLY MEMORANDUM IN SUPPORT OF MOTION TO DISMISS
to be served this date on the parties in this action, via United States mail.

Phyllis J. King
PRO SE
527 Vista Mar Avenue
Pacifica, CA 94404

I declare under penalty of perjury that the foregoing is true and correct.
Dated: June 17, 2008

/s/

STEFANIA M. CHIN
Legal Assistant